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Manufacture of Patented Articles.

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SPEECH

OF

HON. HENRY B. SAYLER

OF INDIANA,

IN THE HOUSE OF REPRESENTATIVES, SATURDAY, FEBRUARY 7, 1874.

The House, being in Committee of the Whole,

Mr. SAYLER, of Indiana, said:

Mr. SPEAKER: I desire to call the attention of this House to a field of legislation which I believe has never yet been occupied. I believe it is of such commanding importance, to be fraught with so much that affects the welfare of the entire people, that it ought to be occupied at once. On the 20th of January last I introduced a bill having in view the regulation of a large class of interests that it appeared to me ought to be regulated by act of Congress. The number of the bill is 1392, and I suppose members will find it upon their files.

Before calling attention to the provisions of the bill, I wish to preface by remarking that the only absolute monopoly in this country is the manufacture of articles protected by letters-patent. There is no other interest in this country that is so absolutely and perfectly a monopoly as this. A man who has a patent-right, or a company or association which has a patent-right, upon an important subject, are made lords of all they survey in this country; and there is no possible way of restraining their desire to wrench from the labor of the country the largest possible percentage.

The first section of my bill provides that where a machine or other article is manufactured or compounded by virtue of a single patent, it may be manufactured, used, or sold by any person, whether in his individual or associated capacity, by payment of a royalty to the owner of the patent-right of 10 per cent. upon the market value of the article manufactured; and that he shall protect the owner of the patent-right by filing in the Patent Office a bond in the sum of $10,000, conditioned upon the accounting every six months for this royalty and the payment thereof. He is also to give notice through the Patent Office of his name, place of residence, and place of business.

The second section provides that wherever any article or machine has in its construction or composition an improvement protected by letters-patent, or where it is constructed or compounded under and by virtue of a combination or consolidation of two or more patents, then any person, in his individual or associated capacity, may go into the United States district court in the district where the owners of those patents or the majority of them may reside, and by proceedings such as are now provided in civil causes therein have the royalty determined by the court; and that this first proceeding shall be at the cost of the applicant, he protecting the owners of the patent by a bond, as I have before indicated. And it being not altogether impossible that the first adjustment of the royalty would be inadequate or unjust, the bill further provides that in the event it is desirable, the owners of the patent, on thirty days' notice, may have a readjustment of the royalty, and that that readjustment shall be at their own cost, and final. The same provision applies to copyrights.

I ask the attention of the House now for a

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brief time to some statistics going to illustrate the justice, the propriety, and, in my judgment, the absolute necessity, of legislation of this character. The statistics that I have gathered are mainly from the returns of the last census. In 1870 there were $2,118,208,769 of capital engaged in all classes of manufacture, whether protected by patents or otherwise. By the expenditure of a little over $775,000,000 for labor, and nearly $2,500,000,000 for material, there was produced an aggregate product of $4,232,000,000. The net product, deducting from this aggregate the wages paid and the cost of the material furnished, was 40 per cent. upon the capital employed. This is not the absolute net profit, but it approximates to it; and I have used it as the basis throughout.

Take tanned leather. In this branch of industry, $42,720,505 of capital brought in as net product 35 per cent.—less than the average; so that it would require a fraction over thirty-four months to make up the entire amount paid for wages, materials, and capital.

Woolen goods produced 32 per cent. upon a like basis. Pig-iron produced upon a like basis 20 per cent. and a fraction. Cotton goods upon the same basis produced 18 per cent. and a fraction. These goods are as nearly free from the influence of patent rights as any that I could find aggregating any considerable capital.

I ask attention now for a little while to some of the industries specially protected by patent rights. First, patent medicine and compounds employed $6,667,684 of capital; and upon the same basis netted 118 per cent. I am not complaining of that so very much in view of the questionable character of many of the products so eagerly bought throughout the country.

In India rubber and elastic goods the capital employed was $7,486,600; the wages paid amounted to $2,559,877; the materials cost $7,434,742. The product was $14,566,370; and the percentage was 59 per cent. upon the capital employed.

Suppose we were to apply the provisions of this bill to this one class of goods; suppose that we had had legislation of this character three years ago in the State of Indiana, (and I presume the case is the same throughout the country,) there would have been a vast amount of most vexatious and expensive litigation saved to a very creditable profession in this country. A large number of dentists in the State of Indiana—more than two hundred, I believe—were compelled to pay to the owners of the hard-rubber patent from $150 to $300 apiece to compromise suits brought against them for infringement. If the provisions of this bill had been in force the dentists in one county, or two or three or four counties, could have banded together, formed an association, given their bond, issued their notices, and then used this material in their business, paying to the owners of the patents 10 per cent. upon the value of the materials used—in no event to be less than twenty-five cents upon a single article. Under such a provision the owners of the patents themselves would have reaped a rich harvest, the dental profession would have been greatly benefitted, the entire community would have received the benefit, and all interested would have been at peace, instead of being dragged from the uttermost corners of the State to the capital of the Commonwealth at great expense to answer to the demand for blood from the owners of these patents.

I turn next to house-organs and materials. The capital employed in the manufacture of these was $1,775,850, producing a net product of 61 per cent. You who have paid $161 for a house-organ have on that basis given to the owners of the patent a net profit of $61 on the organ. Shall music be so dear when the human breast wants it so much?

I next refer to sewing-machines. The capital invested in sewing-machines, as shown by the census, was a little over $8,750,000; the wages paid, a fraction over $5,000,000; the cost of the materials, a fraction over $3,000,000; and the net product was 67 per cent. of the capital. It takes but a fraction over seventeen months for the sewing-machine capital of this country to pay for all the labor it employs, all the materials it uses, and all the capital that is engaged in the business. Every two years you might burn down or utterly destroy every sewing-machine establishment in this country, and they would yet have in their pockets all that they had paid for wages and materials—all their capital, and in the neighborhood of 20 per cent. beside.

In 1871, 610,000 sewing-machines were manufactured by twenty-five companies in this country. Averaging these sewing-machines at sixty dollars apiece, (and surely this is a low average,) we have an aggregate product of $36,600,000; leaving them upon this basis $14,683,833 actual profit. The profit upon a sixty-dollar machine, as shown by the census of 1870, is twenty-four dollars—a very handsome investment.

The entire number of sewing-machines sold in the United States up to the present time reaches in the neighborhood of three million five hundred thousand; and the aggregate profit on this basis upon the sewing-machines throughout the land amounts to $84,250,000;

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and the great proportion of it comes from the toilers by the midnight lamp; the greater portion of it comes from those who are compelled to "stitch, stitch, stitch," for a meager subsistence, while the patent-holders are insisting that $24 out of every $60 that they invest in sewing-machines shall go to them as profit.

Agricultural implements: The capital employed in the manufacture of these in 1870, as shown by the census, was $34,834,600.

They paid a little over $12,000,000 for wages; they paid nearly $21,500,000 for materials; and their net profits on the basis indicated, was 52 per cent. on all the agricultural implements and machinery in the country. The man who pays $150 for his reaper pays $52 as a royalty to-day to the holders of patent-rights. The patent-rights are to be found upon the farm upon every agricultural implement and machine, unless it may possibly be the old split pitch-fork and the old-style rake. It is 52 per cent. on every dollar invested in the manufacture of agricultural implements and machinery clear profit.

The aggregate amount in 1870 of this class of property in the United States was a fraction over $333,000,000. The actual profit upon that was nearly $120,000,000. Taking the two items of sewing-machines and agricultural implements, and the aggregate profit on all that have been sold, from their introduction up to the present time on sewing-machines, and up to 1870 on agricultural implements, is over $200,000,000 of actual profit—clean cut—thick cut, it is true, but clean cut.

Here are now five branches of industry peculiarly protected by patent-rights. The aggregate capital invested in these five branches was a fraction over fifty-nine and a half millions of dollars. That capital produced $37,828,820 of net profits; $59,000,000 produce $37,000,000 net profit. The same amount of capital, or nearly so, invested in manufacturing pig iron ($56,000,000) produced eleven and two-thirds millions of dollars, less than one-third of the net profit of these five patent-right articles. The same amount of capital invested in cotton goods produced about $10,000,000—almost or nearly one-fourth as much as was produced by patent-right articles.

Look at it further. Fifty-nine million dollars constituted one thirty-fifth of the entire capital invested in manufactures in 1870. This one thirty-fifth of the manufacturing capital of the country produced one twenty-second of the net aggregate profits. In any way you may look at it you will find there is a duplication every two years. You may burn up and utterly destroy every agricultural-implement manufacturing establishment in the country, and [illegible] make 4 per cent. on the invested amount. How many farmers of the country would be glad if they could do near so well? Thirty-five millions of capital invested in agricultural implements doubles itself every two years, and leaves a net profit besides. So it goes on, and on, and on, until, when the ordinary life of a patent-right shall have expired, more than $400,000,000 has been made, or nearly made, by the original $35,000,000. To illustrate it: here is a farmer, a young man, who has forty acres of land; he works that forty acres of land year in and year out, and in two years he makes the adjoining forty acres; at the end of the fourth year another forty acres; at the end of six years another forty acres; so that at the end of seventeen years, the ordinary life of a patent, the original forty acres, working nothing else, would have made for him two hundred and eighty acres. Almost any farmer in this broad land would be glad of such an opportunity to provide for his old age and children.

I have no animosity against these patent-rights. I look upon the protection of inventive genius and enterprising capital as one of the greatest influences in developing the material resources of the country. I have no interest whatever in breaking them down. I prefer to encourage, I prefer to strengthen them, but in encouraging and strengthening I do not wish to warm in my bosom the serpent which will turn on me and sting me to death; that will paralyze the hand which has supplied it with the means of life.

Objections are urged to this kind of legislation upon different grounds; but before passing to those objections I desire to appeal to any man here whether if the commercial community of this country could make 10 per cent. net upon its sales it would not be amply satisfied; whether in every other department of labor a net profit of 10 per cent. is not considered a handsome return. Here we have it beyond the 50, beyond the 60, beyond the 100; and all because we have pursued a policy in the country which has given them the absolute control of all the resources of the country.

It is said that such legislation ought not to be considered, because the inventive genius of the country ought to be encouraged. This bill does encourage the inventive genius. It puts into the hands of the inventor his own invention. It gives him the opportunity to interest capital all over the country. It develops his invention wherever it is brought to the attention of the public. As it is now, the inventor of a useful machine or a useful commodity is crushed by vexatious litigation and by untoward influences that are brought to

bear by the capital of the country. I appeal to the members of this House, whether nine-tenths of those who have come here now and heretofore for the extension of patents, have not said invariably that they have been subjected to such vexatious and expensive litigation and so untoward influences from capital that they have been unable themselves to make anything out of their inventions; they have had to buffet and battle, and finally had their hopes crushed out of them, while the capital that has secured the patent has made warm its nest.

It is said further that we ought not to contemplate such legislation, because the right of property is as absolute in a patent-right as in money and ought not to be interfered with. I concede that the right of property in a patent is an actual right that ought to be protected. But it does not follow that we cannot regulate its protection. It was said to me not long since by a prominent gentleman engaged in manufacturing patented articles: "Why, sir, is not my patent-right just as much property to me for the length of time the laws of Congress have granted me the right as $50,000 in money is to you?" My answer was this: "Undoubtedly; but, my dear sir, while I may do as I please with my $50,000 in investing it in manufacturing or commercial pursuits, or in farming, yet when I come to loan it out for other people to use, the laws of every State and of Congress say to me, 'You shall not go beyond a certain per cent. of interest.' They put the bit in my mouth in regard to the use of my $50,000; and so, my dear sir, I would put the bit in your mouth on your capital. You may do as you please with it as long as you use it yourself, but when you charge the community an exorbitant and extortionate price for the use of it, I will put a check on you if possible." And if it is not put on in this way there will be a power, sooner or later, that will come to these halls and will strike out from our statutes every vestige of patent-right law, and let inventors do as best they may.

Mr. PARKER, of New Hampshire. Is it not a constitutional right which these men have to protection?

Mr. SAYLER, of Indiana. I am going to call the attention of the House to that. It is the next objection to which I was intending to allude.

Mr. PARKER, of New Hampshire. I would ask the gentleman, also, is not that right exclusive?

Mr. SAYLER, of Indiana. I will answer that question as best I can. The objection is brought up that this is a constitutional right that cannot be interfered with in the way proposed by this bill. The provision of the Constitution on this subject in article 1, section 8, is as follows:

> The Congress shall have power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

This is the constitutional provision. I will dispose of it in a summary way, which is at least satisfactory to my own mind. This is the aggregate power of Congress on this subject. It is the extent to which it can go. The different grades are not marked out in the Constitution, but the limit is given. I take it that no man upon this floor will undertake to deny that it is not competent for Congress to repeal all law on the subject of patent-rights; and in that case I ask what remedy would the owners of patent-rights have for an infringement or the use of their patents?

Mr. BRIGHT. I desire to ask the gentleman a question. When the Constitution grants a right or a privilege, is it not imperative on Congress to execute it by law, or to provide the means for its execution.

Mr. SAYLER, of Indiana. If the power in Congress is made mandatory the position of my friend is correct. But this is a permissive power. Congress shall have the power to do a certain thing; and if it has the power to do a certain thing it may utterly refuse to exercise that power. We have provisions of the Constitution which have never been executed by legislation.

Mr. CLEMENTS. I desire to ask the gentleman one question, for information merely. While Congress may fail to exercise its power in the premises, and neglects to do anything, can it go to the length of passing a law which would be unconstitutional? If it does anything, must it not comply with the provisions of the Constitution?

Mr. SAYLER, of Indiana. I understand the question of the gentleman from Illinois. It is a question which has been propounded to me time and again, and I shall be glad to give my views on it. The point is, if Congress exercises its powers, it must exercise them to the full limit.

Mr. CLEMENTS. Not to the full limit; but in the manner specified.

Mr. SAYLER, of Indiana. I have this to say in answer to the gentleman's question, that if Congress has the power in the first place to grant an exclusive right of manufacture for a given time on the one hand, and the constitutional power on the other hand to absolutely wipe out all legislation upon the subject, that these two extreme points are not the only points at which the act of Congress

may rest. The greater includes the less. If we can absolutely destroy this property we may preserve a part of it. If we can absolutely take away from these men all rights we may compromise with them and leave them some rights.

Mr. WHITEHEAD. I desire to ask the gentleman a question in regard to the wording of his bill. If Congress proposes to carry out the provision of the Constitution which has been read, must it not do so in the way the Constitution provides? The gentleman's bill provides that anybody may use this patent by paying 10 per cent. Does not the Constitution give the parties the right of assigning to some persons and not to others?

Mr. SAYLER, of Indiana. The word "exclusive" means that. But it means more. It may be exclusive within limits; it may be exclusive within certain prescribed limitations. And within the 10 per cent. provided here, and within the royalty that is determined by the court, the power to manufacture is exclusive. I have simply to say upon this power of the Constitution, that I shall regret the day when a majority in Congress shall say that we have provided a Constitution and laws under which we shall create in our midst a class, a moneyed aristocracy that may feed upon the vitals of the country until it is satiated, without shame and without restraint; and still that we cannot raise our hands against the foul bird that is preying upon us. Shall it be said that this, the creature of our own hands, may turn on us, and, by construction, eat up our substance? Is that the sort of construction that would prevail in any court in the land? Or, rather, would there not be such a construction as was intended by the framers of the Constitution, and by the clear intendment of the law, taken in connection with the development of the art and science of government at the time the construction is made? Shall we put upon ourselves a strait-jacket, and say that this exclusive privilege shall be construed either that we shall give to these companies or corporations a further power, a power that nobody else in this country can exercise, or else that we shall refuse it altogether? Sir, if the advocates of the owners of these patents throw down that gauntlet, I will take it up and go to the country and say: "Since you will not go upon fair and reasonable grounds, you shall go without relief, without any kind of protection; if you insist upon destroying our substance, we will in self-defense, turn on you and destroy you."

Mr. PARKER, of New Hampshire. Would you not thereby violate the Constitution?

Mr. SAYLER, of Indiana. Not by any means. This is a permissive power, and the repeal of the patent-right law would be no violation of the Constitution whatever. I have never yet heard any man, professional, practicing lawyer or statesman, take the ground that Congress could not repeal an act that it had passed; probably the rights created by that act would be reserved.

Mr. WHITEHEAD. Would it be wise, provided Congress had the right, to exercise the right to repeal the patent laws?

Mr. SAYLER, of Indiana. I do not think it would be.

Mr. WHITEHEAD. I think that nothing has tended so much to develop the agricultural resources of this coentry as the genius that has been displayed in the invention and mauufacture of agricultural tools. The people who use them are at perfect liberty to avail themselves of the skill of the inventor or not, as they choose. If they choose, they can go back to the old primitive articles of manufacture.

Mr. SAYLER, of Indiana. That is very much like saying to poor Jack, "Why don't you eat your supper?" At the same time he had no supper to eat. These primitive modes of agriculture have passed away. The necessities of the times have made these improved agricultural machines absolutely necessary. Had the gentleman listened to me a while ago he would have heard that I had no animosity to inventive genius; that I thought it ought to be encouraged, and developed and protected. But when it turns upon its protector, and says to its creator, "Give me your blood and substance to the last," then I will meet it and say, "You are my creature; down! If you will not confine yourself within reasonable limits, then we will bring our power to bear upon you to its fullest extent."

Mr. WHITEHEAD. Has not the Constitution provided for a remedy by saying that this right may be protected for a limited time, so that you may give it a limited right, for one year for instance, and then throw it open to the public? And by using the word "exclusive" does not the Constitution intend to give the inventor the absolute control for so long a time as Congress in its wisdom may see proper to limit that control?

Mr. SAYLER, of Indiana. I do not think so. We may limit it to one year, it is true. Suppose we were to submit this question to the patent owners: "Will you take your patent-right for a year or 10 per cent. royalty for seventeen years?" What would be the answer.

Mr. WHITEHEAD. I do not say that would not be the best way. But I ask, is not Congress restricted under the Constitution to giving an exclusive proprietorship to the in-

ventor, and the controlling him by limiting the time for which he is to have that exclusive proprietorship?

Mr. SAYLER, of Indiana. I understand the gentleman, but I prefer my mode to his on constitutional grounds. But there is another element in this matter that is worthy of all consideration, worthy of all acceptation. There is no one thing to-day which is bringing the Government of the United States more into contempt and reproach among its own citizens than the swindling that is carried on in the sale of territory of patent-rights. Most villainous has been its practice throughout the country. As a rule, you find that no good patent-right is on the market peddling itself out in that way. A good patent-right is too good a property to be used in that way. An invention which is of value, and will pay from 50 to 100 per cent. upon the capital used, will not be put out in that way. But the worthless patents are carried through the country by designing men, and sold; they go through the country with a great sheet of parchment, handsomely embellished with a picture of the Patent Office, beautifully executed, written in an elegant hand, with the great seal of the Patent Office attached. And they say, "Look here; the United States has had this matter before scientific men, and they say it is worth a great deal." And simple people, and often those who are not simple, are got into such a situation that they cannot restrain themselves, and they will buy. I know one town in my own State where these designing men took $33,500 for one of these worthless patents. All these designing men who have patents that are not worth a last year's robin's nest go out under the cloak of the authority of the Government with a patent-right, and swindle the people out of their substance.

Mr. SPEER. I would like to put a question to the gentleman. I am ready to join with him in denouncing the swindling patent-right men who travel over the country; but as a practical question, what remedy does the gentleman propose?

Mr. SAYLER, of Indiana. I propose to apply a remedy by this bill, (H. R. No. 1392.) By this measure I would take away from everybody the opportunity of making such immense profits out of patent-rights; I would say to them that there shall be no more than 10 per cent. royalty in any patent. Thus I would take away the inducement to these extortionate profits; I would remove the exciting cause of this cupidity.

Mr. SPEER. Would not the gentleman have to go a step further and legislate brains into the people to prevent them from being swindled?

Mr. SAYLER, of Indiana. I do not propose to do that. I propose to take away from these designing men the means of making exorbitant profits out of that which derives its value from the official authority of the Government. If then the people have not brains enough to protect themselves they will have to suffer. As suggested by my colleague, [Mr. SHANKS,] the essential element of value in a patent comes from the fact that it has been examined by the scientific departments of the Government, and has the sanction of the United States, giving an exclusive right to the patentee. In a vast majority of cases that is the only element of value, and it is utterly fictitious. I would take it away.

Why, sir, throughout the West, traveling along the highways, you will see here and there upon the gate-posts a notice posted up: "Patent-right men not allowed on these premises." Why is this? These men have the authority of the Government of the United States; they have the parchment of this Government attested by its seal; why can they not be allowed upon the premises of the people the same as any other honest men? Because there has gathered about this subject so much contempt, and the Government itself is brought into such odium. Let us wipe out these oppressive monopolies. Let us make fair terms with inventive genius and enterprising capital. Let us pay whatever is right and proper in consideration of inventive genius and the intrepidity and enterprise of capital. Let us say, "For all the energy that you display you shall have a sufficient reward in the way of absolute monopoly to yield you 10 per cent." If 10 per cent. is not enough, make it 15; if 10 per cent. is too much, make it 5. But let us put an end to this oppressive system of patent-rights, which runs riot throughout the land, trampling every green thing into the dust.

Mr. Speaker, I entreat for this subject the consideration to which it is entitled. Yearly hundreds of millions of extortionate profits are gathered into the coffers of the few. Give me the Goodyear patent, give me almost any patent that is now in general use, and I shall ask no more than 5 or 10 per cent. royalty. Why, sir, a royalty of 10 per cent. upon these various articles in common use would give to the owners of the patent-rights a princely income; it would make them an order of purple and fine linen sufficiently conspicuous to answer all the purposes of a Republic like ours.

I ask, then, that when this subject shall come before the House, there may be such action upon it as will satisfy the country that this Congress is not only willing but ready to

grapple with the greatest monopoly of the age in the interest of the oppressed people.

Mr. WHITEHEAD. I would like the gentleman to make one explanation. Does not his bill provide that any manufacturer, by paying 10 per cent., may use a patent; and would not this give to the capitalist an advantage over the man of small means?

Mr. SAYLER, of Indiana. The patentee gets his royalty from the rich man who manufactures.

Mr. WHITEHEAD. Does not that rich man get all the profit?

Mr. SAYLER, of Indiana. No, sir; I think it will be found that if he makes more than 10 per cent. above the royalty upon the patent, competition will restrain him, as is the case in other departments of manufacture.

Mr. SHANKS. I wish to ask my colleague whether it is a fact that the Post-Office Department pays a royalty of two dollars on each of the letter-boxes which we see upon lamp-posts in the different cities where the system of delivery by carriers is in operation? I understand that upon each of those boxes two dollars royalty is paid to some one holding a patent. So that whenever we extend the letter-carrier system we impose upon the United States an additional liability to pay two dollars royalty upon all the letter-boxes that may be found necessary in the extension of the system.

Mr. SAYLER, of Indiana. I understand that to be a fact, though I am not authoritatively informed upon the point from any official source.

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